

AMENDED IN ASSEMBLY AUGUST 10, 2004

AMENDED IN ASSEMBLY JULY 15, 2004

AMENDED IN ASSEMBLY JUNE 22, 2004

AMENDED IN ASSEMBLY JUNE 9, 2004

AMENDED IN SENATE MAY 20, 2004

AMENDED IN SENATE MAY 4, 2004

AMENDED IN SENATE APRIL 27, 2004

AMENDED IN SENATE MARCH 26, 2004

SENATE BILL

No. 1342

Introduced by Senators Speier and Romero

February 18, 2004

~~An act to amend Sections 6125, 6128, and 6129 of, and to add Section 6130 to,~~ *An act to amend Sections 6125, 6126, 6128, and 6129 of the Penal Code, relating to the Inspector General.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1342, as amended, Speier. Inspector General.

Existing law establishes the office of the Inspector General relative to corrections, and generally provides for various duties and authority of the office.

This bill would provide that the Inspector General would be appointed to a 6-year term, subject to Senate confirmation, and that the Inspector General could not be removed from office except for good

cause. *The bill would require the Inspector General to develop a methodology for producing a workload budget, as specified.*

The bill would revise certain provisions relating to what materials are deemed confidential in connection with investigations by the Inspector General. The bill would delete provisions regarding investigations of employees of the Youthful Offender Parole Board, and revise provisions regarding the communication to the Inspector General ~~if of~~ information that may describe a variance from various departmental investigatory policies and procedures to apply, instead, to improper governmental activity, as defined. The bill would also revise procedures relating to the investigation of complaints of retaliation by certain employees, and would provide a procedure for coordinating investigations by the Inspector General and the appropriate employing entity, and complaints filed with the Inspector General and the State Personnel Board by an employee, as specified. The bill would delete provisions authorizing punitive damages for malicious acts by offending parties against state employees, ~~and revise the provisions for the referral of criminal conduct by the Inspector General and specified state agencies to law enforcement officials, the district attorney, or Attorney General.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6125 of the Penal Code is amended to
2 read:

3 6125. There is hereby created the independent office of the
4 Inspector General which shall not be a subdivision of any other
5 governmental entity. The Governor shall appoint, subject to
6 confirmation by the Senate, the Inspector General to a six-year
7 term. The Inspector General may not be removed from office
8 during that term, except for good cause.

9 SEC. 2. *Section 6126 of the Penal Code is amended to read:*

10 6126. (a) The Inspector General shall be responsible for
11 reviewing departmental policy and procedures for conducting
12 audits of investigatory practices and other audits, as well as
13 conducting investigations of the Department of Corrections, the
14 Department of the Youth Authority, the Board of Prison Terms, the
15 Youthful Offender Parole Board, the Board of Corrections, the

1 Narcotic Addict Evaluation Authority, the Prison Industry
2 Authority, and the Youth and Adult Correctional Agency, as
3 requested by either the Secretary of the Youth and Adult
4 Correctional Agency or a Member of the Legislature, pursuant to
5 the approval of the Inspector General under policies to be
6 developed by the Inspector General. The Inspector General may,
7 under policies developed by the Inspector General, initiate an
8 investigation or an audit on his or her own accord.

9 (b) Upon completion of an investigation or audit, the Inspector
10 General shall provide a response to the requester.

11 (c) The Inspector General shall, during the course of an
12 investigatory audit, identify areas of full and partial compliance,
13 or noncompliance, with departmental investigatory policies and
14 procedures, specify deficiencies in the completion and
15 documentation of investigatory processes, and recommend
16 corrective actions, including, but not limited to, additional training
17 with respect to investigative policies, additional policies, or
18 changes in policy, as well as any other findings or
19 recommendations that the Inspector General deems appropriate.

20 (d) *The Inspector General shall, in consultation with the*
21 *Department of Finance, develop a methodology for producing a*
22 *workload budget to be used for annually adjusting the budget of*
23 *the office of the Inspector General, beginning with the budget for*
24 *the 2005–06 fiscal year.*

25 SEC. 3. Section 6128 of the Penal Code is amended to read:

26 6128. (a) The office of the Inspector General may receive
27 communications from any individual, including those employed
28 by any department, board, or authority who believes he or she may
29 have information that may describe an improper governmental
30 activity, as that term is defined in subdivision (b) of Section 8547.2
31 of the Government Code. It is not the purpose of these
32 communications to redress any single disciplinary action or
33 grievance that may routinely occur.

34 (b) In order to properly respond to any allegation of improper
35 governmental activity, the Inspector General shall establish a
36 toll-free public telephone number for the purpose of identifying
37 any alleged wrongdoing by an employee of the Department of
38 Corrections, the Department of the Youth Authority, the Board of
39 Prison Terms, the Board of Corrections, the Narcotic Addict
40 Evaluation Authority, the Prison Industry Authority, or the Youth

1 and Adult Correctional Agency. This telephone number shall be
2 posted by the above-named departments, and their respective
3 subdivisions, in clear view of all employees and the public. When
4 appropriate, the Inspector General shall initiate an investigation or
5 audit of any alleged improper governmental activity. However,
6 any request to conduct an investigation shall be in writing.

7 (c) All identifying information, and any personal papers or
8 correspondence from any person who initiated the investigation
9 shall not be disclosed, except in those cases where the Inspector
10 General determines that disclosure of the information is necessary
11 in the interests of justice.

12 ~~SEC. 3.~~

13 *SEC. 4.* Section 6129 of the Penal Code is amended to read:

14 6129. (a) (1) For purposes of this section, “employee”
15 means any person employed by the Youth and Adult Correctional
16 Agency, the Department of Corrections, the Department of the
17 Youth Authority, the Board of Corrections, the Board of Prison
18 Terms, the Youth Authority Board or the Inspector General.

19 (2) For purposes of this section, “retaliation” means
20 intentionally engaging in acts of reprisal, retaliation, threats,
21 coercion, or similar acts against another employee who has done
22 either of the following:

23 (A) Has disclosed or is disclosing to any employee at a
24 supervisory or managerial level, what the employee, in good faith,
25 believes to be improper governmental activities.

26 (B) Has cooperated or is cooperating with any investigation of
27 improper governmental activities.

28 (C) Has refused to obey an illegal order or directive.

29 (b) (1) Upon receiving a complaint of retaliation from an
30 employee against a member of management, the Inspector General
31 shall commence an inquiry into the complaint and conduct a
32 formal investigation where a legally cognizable cause of action is
33 presented. All investigations conducted pursuant to this section
34 shall be performed in accordance with Sections 6126.5 and
35 6127.3. The Inspector General may refer all other matters for
36 investigation by the appropriate employing entity, subject to
37 investigative oversight by the Inspector General. In a case in which
38 the employing entity declines to investigate the complaint, it shall,
39 within 30 days of receipt of the referral by the Inspector General,
40 notify the Inspector General of its decision. The Inspector General

1 shall thereafter, conduct his or her own inquiry into the complaint.
2 If, after reviewing the complaint, the Inspector General
3 determines that a legally cognizable cause of action has not been
4 presented by the complaint, the Inspector General shall thereafter
5 notify the complaining employee and the State Personnel Board
6 that a formal investigation is not warranted.

7 (2) When investigating a complaint, in determining whether
8 retaliation has occurred, the Inspector General or the employing
9 entity shall consider, among other things, whether any of the
10 following either actually occurred or were threatened:

11 (A) Unwarranted or unjustified staff changes.

12 (B) Unwarranted or unjustified letters of reprimand or other
13 disciplinary actions, or unsatisfactory evaluations.

14 (C) Unwarranted or unjustified formal or informal
15 investigations.

16 (D) Engaging in acts, or encouraging or permitting other
17 employees to engage in acts, that are unprofessional, or foster a
18 hostile work environment.

19 (E) Engaging in acts, or encouraging or permitting other
20 employees to engage in acts, that are contrary to the rules,
21 regulations, or policies of the workplace.

22 (3) In a case in which the complaining employee has also filed
23 a retaliation complaint with the State Personnel Board pursuant to
24 Sections 8547.8 and 19683 of the Government Code, the State
25 Personnel Board shall have the discretion to toll any investigation,
26 hearing, or other proceeding that would otherwise be conducted by
27 the State Personnel Board in response to that complaint, pending
28 either the completion of the Inspector General's or the employing
29 entity's investigation, or until the complaint is rejected or
30 otherwise dismissed by the Inspector General or the employing
31 entity. An employee, however, may not be required to first file a
32 retaliation complaint with the Inspector General prior to filing a
33 complaint with the State Personnel Board.

34 (A) In a case in which the complaining employee has filed a
35 retaliation complaint with the Inspector General but not with the
36 State Personnel Board, the limitation period for filing a retaliation
37 complaint with the State Personnel Board shall be tolled until the
38 time the Inspector General or the employing entity either issues its
39 investigative report to the State Personnel Board, or until the

1 complaint is rejected or otherwise dismissed by the Inspector
2 General or the employing entity.

3 (B) In order to facilitate coordination of efforts between the
4 Inspector General and the State Personnel Board, the Inspector
5 General shall notify the State Personnel Board of the identity of
6 any employee who has filed a retaliation complaint with the
7 Inspector General, and the State Personnel Board shall notify the
8 Inspector General of the identity of any employee who has filed a
9 retaliation complaint with the State Personnel Board.

10 (c) (1) In a case in which the Inspector General determines, as
11 a result of his or her own investigation, that an employee has been
12 subjected to acts of reprisal, retaliation, threats, or similar acts in
13 violation of this section, the Inspector General shall provide a copy
14 of the investigative report, together with all other underlying
15 investigative materials the Inspector General determines to be
16 relevant, to the appropriate director or chair who shall take
17 appropriate corrective action. In a case in which the Inspector
18 General determines, based on an independent review of the
19 investigation conducted by the employing entity, that an employee
20 has been subjected to acts of reprisal, retaliation, threats, or similar
21 acts in violation of this section, the Inspector General shall submit
22 a written recommendation to the appropriate director or chair who
23 shall take appropriate corrective action. If the hiring authority
24 initiates disciplinary action as defined in Section 19570 of the
25 Government Code, it shall provide the subject with all materials
26 required by law.

27 (2) The Inspector General shall publish a quarterly summary of
28 investigations, with personal identifying information removed,
29 including, but not limited to, the conduct investigated, any
30 recommended discipline, and any discipline actually imposed.

31 (3) Any employee at any rank and file, supervisory, or
32 managerial level, who intentionally engages in acts of reprisal,
33 retaliation, threats, coercion, or similar acts against another
34 employee, pursuant to paragraph (2) of subdivision (a), shall be
35 disciplined by the employing entity by adverse action as provided
36 in Section 19572 of the Government Code. The disciplinary action
37 shall require, at a minimum, a suspension for not less than 30 days
38 without pay, except in a case in which the employing entity
39 determines that a lesser penalty is warranted. In that case, the
40 employing entity shall, within 30 days of receipt of the



1 investigative report, provide written justification for that decision
2 to the Inspector General. The employing entity shall also, within
3 30 days of receipt of the written report, notify the Inspector
4 General in writing as to what steps, if any, it has taken to remedy
5 the retaliatory conduct found to have been committed by any of its
6 employees.

7 (d) (1) In an instance in which the appropriate director or chair
8 declines to take adverse action against any employee found by the
9 Inspector General to have engaged in acts of reprisal, retaliation,
10 threats, or similar acts in violation of this section, the director or
11 chair shall notify the Inspector General of that fact in writing
12 within 30 days of receipt of the investigative report from the
13 Inspector General, and shall notify the Inspector General of the
14 specific reasons why the director or chair declined to invoke
15 adverse action proceedings against the employee.

16 (2) The Inspector General shall, thereafter, with the written
17 consent of the complaining employee, forward an unredacted copy
18 of the investigative report, together with all other underlying
19 investigative materials the Inspector General deems to be relevant,
20 to the State Personnel Board so that the complaining employee can
21 request leave to file charges against the employee found to have
22 engaged in acts of reprisal, retaliation, threats, or similar acts, in
23 accordance with the provisions of Section 19583.5 of the
24 Government Code. If the State Personnel Board accepts the
25 complaint, the board shall provide the charged and complaining
26 parties with a copy of all relevant materials.

27 (3) In addition to all other penalties provided by law, including
28 Section 8547.8 of the Government Code or any other penalties that
29 the sanctioning authority may determine to be appropriate, any
30 state employee at any rank and file, supervisory, or managerial
31 level found by the State Personnel Board to have intentionally
32 engaged in acts of reprisal, retaliation, threats, or coercion shall be
33 suspended for not less than 30 days without pay, and shall be liable
34 in an action for damages brought against him or her by the injured
35 party. If the State Personnel Board determines that a lesser period
36 of suspension is warranted, the reasons for that determination must
37 be justified in writing in the decision.

38 (e) Nothing in this section shall prohibit the employing entity
39 from exercising its authority to terminate, suspend, or discipline
40 an employee who engages in conduct prohibited by this section.

1 ~~SEC. 4. Section 6130 is added to the Penal Code, to read:~~
2 ~~6130. The Youth and Adult Correctional Agency, the~~
3 ~~Department of the Youth Authority, the Department of~~
4 ~~Corrections, the Board of Corrections, the Board of Prison Terms,~~
5 ~~or other applicable employing entity, shall immediately inform the~~
6 ~~Inspector General of all matters involving employee criminal~~
7 ~~conduct and shall refer those matters to the district attorney in the~~
8 ~~appropriate jurisdiction and the Attorney General for further~~
9 ~~action. The employing entity shall make available all information~~
10 ~~and evidence gathered during the investigative process to those~~
11 ~~law enforcement authorities who receive the referral and the~~
12 ~~employing entity shall cooperate with further investigation by~~
13 ~~those authorities. Except as to law enforcement authorities, the~~
14 ~~employing entity shall not disclose official information gathered~~
15 ~~during the investigative process which is deemed to be~~
16 ~~confidential or privileged pursuant to any other provision of law~~
17 ~~and no official information deemed to be confidential or privileged~~
18 ~~may be entered in the officer's personnel file unless adverse action~~
19 ~~is sustained by the hiring authority.~~

